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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 01, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PATRICIA MARIE W.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:18-CV-03036-RHW

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Before the Court are the parties' cross-motions for summary judgment, ECF Nos. 12, 16. Plaintiff brings this action seeking judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner's final decision, which denied her application for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C § 1381-1383f. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth below, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ~ 1**

I. JURISDICTION

2 Plaintiff filed her application for Supplemental Security Income on June 6,
3 2014. AR 17, 188. Her alleged onset date is January 1, 2014. *Id.* Her applications
4 were initially denied on October 27, 2014, AR17, 83. and on reconsideration on
5 February 23, 2015, AR 17, 96-97.

6 Administrative Law Judge (“ALJ”) Larry Kennedy held a hearing on
7 September 15, 2016. AR 17, 36-70. On December 28, 2016, ALJ Kennedy issued a
8 decision finding Plaintiff ineligible for disability benefits. AR 17-30. The Appeals
9 Council denied Plaintiff’s request for review on January 3, 2018, AR 1-6, making
10 the ALJ’s ruling the “final decision” of the Commissioner.

11 Plaintiff timely filed the present action challenging the denial of benefits on
12 March 9, 2018. ECF No. 3. Accordingly, Plaintiff's claims are properly before this
13 Court pursuant to 42 U.S.C. § 405(g).

II. SEQUENTIAL EVALUATION PROCESS

15 The Social Security Act defines disability as the “inability to engage in any
16 substantial gainful activity by reason of any medically determinable physical or
17 mental impairment which can be expected to result in death or which has lasted or
18 can be expected to last for a continuous period of not less than twelve months.” 42
19 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be
20 under a disability only if the claimant’s impairments are of such severity that the

1 claimant is not only unable to do his previous work, but cannot, considering
2 claimant's age, education, and work experience, engage in any other substantial
3 gainful work that exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A) &
4 1382c(a)(3)(B).

5 The Commissioner has established a five-step sequential evaluation process
6 for determining whether a claimant is disabled within the meaning of the Social
7 Security Act. 20 C.F.R. §§ 404.1520(a)(4) & 416.920(a)(4); *Lounsbury v.*
8 *Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

9 Step one inquires whether the claimant is presently engaged in “substantial
10 gainful activity.” 20 C.F.R. §§ 404.1520(b) & 416.920(b). Substantial gainful
11 activity is defined as significant physical or mental activities done or usually done
12 for profit. 20 C.F.R. §§ 404.1572 & 416.972. If the claimant is engaged in
13 substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§
14 404.1571 & 416.920(b). If not, the ALJ proceeds to step two.

15 Step two asks whether the claimant has a severe impairment, or combination
16 of impairments, that significantly limits the claimant's physical or mental ability to
17 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe
18 impairment is one that has lasted or is expected to last for at least twelve months,
19 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09 &
20 416.908-09. If the claimant does not have a severe impairment, or combination of

1 impairments, the disability claim is denied, and no further evaluative steps are
2 required. Otherwise, the evaluation proceeds to the third step.

3 Step three involves a determination of whether any of the claimant's severe
4 impairments "meets or equals" one of the listed impairments acknowledged by the
5 Commissioner to be sufficiently severe as to preclude substantial gainful activity.
6 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;
7 20 C.F.R. § 404 Subpt. P. App. 1 ("the Listings"). If the impairment meets or
8 equals one of the listed impairments, the claimant is *per se* disabled and qualifies
9 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to
10 the fourth step.

11 Step four examines whether the claimant's residual functional capacity
12 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f)
13 & 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant
14 is not entitled to disability benefits and the inquiry ends. *Id.*

15 Step five shifts the burden to the Commissioner to prove that the claimant is
16 able to perform other work in the national economy, taking into account the
17 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),
18 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this
19 burden, the Commissioner must establish that (1) the claimant is capable of
20 performing other work; and (2) such work exists in "significant numbers in the

1 national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,
2 676 F.3d 1203, 1206 (9th Cir. 2012).

3 III. STANDARD OF REVIEW

4 A district court's review of a final decision of the Commissioner is governed
5 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the
6 Commissioner's decision will be disturbed “only if it is not supported by
7 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1144,
8 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means “more than
9 a mere scintilla but less than a preponderance; it is such relevant evidence as a
10 reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v.*
11 *Chater*, 108 F.3d 978, 980 (9th Cir. 1997) (quoting *Andrews v. Shalala*, 53 F.3d
12 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining
13 whether the Commissioner's findings are supported by substantial evidence, “a
14 reviewing court must consider the entire record as a whole and may not affirm
15 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*
16 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879
17 F.2d 498, 501 (9th Cir. 1989)).

18 In reviewing a denial of benefits, a district court may not substitute its
19 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.
20 1992). If the evidence in the record “is susceptible to more than one rational

1 interpretation, [the court] must uphold the ALJ's findings if they are supported by
2 inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104,
3 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
4 2002) (if the "evidence is susceptible to more than one rational interpretation, one
5 of which supports the ALJ's decision, the conclusion must be upheld"). Moreover,
6 a district court "may not reverse an ALJ's decision on account of an error that is
7 harmless." *Molina*, 674 F.3d at 1111. An error is harmless "where it is
8 inconsequential to the [ALJ's] ultimate nondisability determination." *Id.* at 1115.
9 The burden of showing that an error is harmful generally falls upon the party
10 appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

IV. STATEMENT OF FACTS

12 The facts of the case are set forth in detail in the transcript of proceedings,
13 and accordingly, are only briefly summarized here. Plaintiff was 32 years old on
14 the date the application was filed. AR 27. She has at least a high school degree and
15 is able to communicate in English. *Id.* Plaintiff's prior work experience as a nurse
16 assistant and nurse school attendant. AR 27.

V. THE ALJ'S FINDINGS

18 The ALJ determined that Plaintiff was not under a disability within the
19 meaning of the Act from June 6, 2014, through the date of the decision. AR 17-29.

1 **At step one**, the ALJ found that Plaintiff had not engaged in substantial
2 gainful activity since June 6, 2014, the date she filed her application for benefits
3 (citing 20 C.F.R. §§ 404.1571 *et seq.* and 416.971 *et seq.*). AR 20.

4 **At step two**, the ALJ found Plaintiff had the following severe impairments:
5 major depressive disorder; anxiety; generalized anxiety disorder; post traumatic
6 stress disorder (“PTSD”); borderline-personality disorder; attention deficit
7 hyperactivity disorder. *Id.*

8 **At step three**, the ALJ found that Plaintiff did not have an impairment or
9 combination of impairments that meets or medically equals the severity of one of
10 the listed impairments in 20 C.F.R. § 404, Subpt. P, App. 1. AR 22.

11 **At step four**, the ALJ found Plaintiff had the residual functional capacity to
12 perform a full range of work at all exertional levels but with the following
13 limitations: she can perform simple, routine tasks and follow short, simple
14 instructions; she can do work that needs little or no judgement and can do so in
15 proximity to coworkers but not in a cooperative or team effort; she requires a work
16 environment that has no more than superficial interactions with coworkers; she
17 requires a work environment that is predictable with few work setting changes; she
18 cannot deal with the general public as in a sales position or where the general
19 public is frequently encountered as an essential element of the work process,

1 however, incidental contact of a superficial nature with the general public is not
2 precluded. AR 23.

3 The ALJ determined that Plaintiff was unable to perform any past relevant
4 work as a nurse assistant or nurse school attendant. AR 27.

5 At **step five**, the ALJ found that in light of her age, education, work
6 experience, and residual functional capacity, there are also other jobs that exist in
7 significant numbers in the national economy that Plaintiff can perform. AR 27-28.
8 These include industrial cleaner, kitchen helper, laundry worker II,
9 cleaner/housekeeper, and “assembler. AR 28.

10 VI. ISSUES FOR REVIEW

11 Plaintiff argues that the Commissioner’s decision is not free of legal error
12 and not supported by substantial evidence. Specifically, she argues the ALJ erred
13 by: (1) Improperly discrediting Plaintiff’s subjective complaint testimony; (2)
14 improperly weighing the medical opinion evidence; and (3) improperly concluding
15 that Plaintiff did not have medically determinable and severe headaches at step two
16 of the sequential evaluation process.

17 VII. DISCUSSION

18 A. The ALJ Properly Evaluated Plaintiff’s Symptom Testimony.

19 An ALJ engages in a two-step analysis to determine whether a claimant’s
20 testimony regarding subjective symptoms is credible. *Tommasetti*, 533 F.3d at

1 1039. First, the claimant must produce objective medical evidence of an underlying
2 impairment or impairments that could reasonably be expected to produce some
3 degree of the symptoms alleged. *Id.* Second, if the claimant meets this threshold,
4 and there is no affirmative evidence suggesting malingering, “the ALJ can reject
5 the claimant’s testimony about the severity of [his] symptoms only by offering
6 specific, clear, and convincing reasons for doing so.” *Id.*

7 In weighing a claimant's credibility, the ALJ may consider many factors,
8 including, “(1) ordinary techniques of credibility evaluation, such as the claimant's
9 reputation for lying, prior inconsistent statements concerning the symptoms, and
10 other testimony by the claimant that appears less than candid; (2) unexplained or
11 inadequately explained failure to seek treatment or to follow a prescribed course of
12 treatment; and (3) the claimant's daily activities.” *Smolen v. Chater*, 80 F.3d 1273,
13 1284 (9th Cir. 1996). Here, the ALJ found Plaintiff's medically determinable
14 impairments could reasonably be expected to cause her alleged symptoms, but her
15 statements concerning the intensity, persistence, and limiting effects were not
16 entirely consistent with the evidence in the record. AR 22-25. The ALJ provided
17 multiple clear and convincing reasons for discrediting Plaintiff's subjective
18 complaints.

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20 //

1 **1. The ALJ properly discredited Plaintiff's subjective complaints due to**
2 **inconsistency with treatment.**

3 The ALJ noted multiple inconsistencies with Plaintiff's treatment. AR 22-
4 25. A claimant's statements may be less credible when treatment is inconsistent
5 with the level of complaints or a claimant is not following treatment prescribed
6 without good reason. *Molina*, 674 F.3d at 1114. "Unexplained, or inadequately
7 explained, failure to seek treatment . . . can cast doubt on the sincerity of [a]
8 claimant's [] testimony." *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).
9 Additionally, an ALJ may also find a claimant's symptom testimony not credible
10 based on evidence of effective responses to treatment or when Plaintiff is not
11 following treatment without a good reason. *See, e.g., Burch*, 400 F.3d at 681;
12 *Molina*, 674 F.3d at 1114; *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); 20
13 C.F.R. §§ 404.1529(c)(3), 416.1529(c)(3). Here, the ALJ referenced multiple
14 instances that suggest Plaintiff's symptoms are not as severe as she alleged.

15 First, the ALJ noted that Plaintiff had chronic problems with compliance in
16 taking her medication. AR 25, 424, 432. The ALJ noted that in February and
17 March of 2016, while compliant with her medication, Plaintiff was experiencing
18 "good stability," felt better after walking for 20 minutes as advised by her
19 healthcare provider and needed to come to appointments only once per month. AR
20 25, 447, 494, 503, 507. Plaintiff stated that her medications were making a
difference and that when she did not take her medication, she noticed a difference

1 and felt more down, tired, angry and irritable. AR 25, 452, 456, 459, 491, 513, 534,
2 537. Health records noted that Plaintiff was handling interpersonal interactions in a
3 healthier manner after engaging in mental health counseling. AR 24-25, 513, 516.
4 While attending mental health counseling, Plaintiff reported having better self-talk
5 and approaching issues calmly. AR 499, 517, 519, 521, 527, 529, 531, 533.

6 Thus, the record shows that Plaintiff responded favorably when she
7 complied with her treatment and medications. AR 25, 427, 434. Impairments that
8 can be controlled with treatment are not disabling. *See Warre ex rel. E.T. IV v.*
9 *Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006). As such, the
10 ALJ reasonably found that Plaintiff's success when compliant with treatment
11 contradict her allegations of total disability. There is substantial evidence in the
12 record supporting the ALJ's determination that Plaintiff's conditions are not as
13 limiting as she alleges.

14 **2. The ALJ properly discredited Plaintiff due to inconsistent
statements.**

15 Next, the ALJ pointed to Plaintiff's multiple inconsistent statements. AR 25.
16 Inconsistent statements may be considered by an ALJ when evaluating reliability
17 of a claimant's testimony. *Smolen*, 80 F.3d at 1284. An ALJ may rely on ordinary
18 techniques of credibility evaluation such as a witness's prior inconsistent
19 statements. *Tommasetti*, 533 F.3d at 1039.
20

1 In February 2015, Plaintiff reported being able to shop independently. AR
2 402. However, at the hearing, she testified that she had to take a friend shopping
3 with her because she could not go alone because she got anxious being out alone in
4 crowds. AR 26, 45, 47. Plaintiff also reported that she had no difficulty caring for
5 her two children as well as her boyfriend's three children, AR 22, 25, 401-02,
6 which is inconsistent with her testimony that her parents had to help care for her
7 children a lot due to her impairments. AR 48. Further, Plaintiff claimed an inability
8 to get out of bed and go for walks and that she would get anxiety while out in
9 public were contradictory to her reports that she was not socially withdrawn, she
10 was "going out and doing things," attended a lot of family functions, hung out with
11 friends a lot, and played Pokemon Go. AR 22, 25, 398, 401-02, 428, 452, 456 447-
12 65.

13 There is substantial evidence in the record to support the ALJ's finding that
14 Plaintiff provided inconsistent statements regarding her level of disability. Thus,
15 the ALJ reasonably discredited Plaintiff due to her inconsistent statements.

16 **3. The ALJ properly discredited Plaintiff's subjective complaints due to
17 her activities of daily living.**

18 Next, the ALJ found that Plaintiff's allegations of disabling limitations were
19 belied by her daily activities. AR 22, 25. Activities inconsistent with the alleged
20 symptoms are proper grounds for questioning the credibility of an individual's
subjective allegations. *Molina*, 674 F.3d at 1113 ("[e]ven where those activities

1 suggest some difficulty functioning, they may be grounds for discrediting the
2 claimant's testimony to the extent that they contradict claims of a totally
3 debilitating impairment"); *see also Rollins v. Massanari*, 261 F.3d 853, 857 (9th
4 Cir. 2001).

5 These activities include dressing, bathing and grooming herself, performing
6 household chores such as sweeping and vacuuming, going to the store, spending a
7 lot of time with friends, going to a lot of family functions, going for walks and
8 playing Pokemon Go. AR 22-23, 401, 428, 447-65. Plaintiff also had no difficulty
9 caring for her children. AR 22, 401-02. She reported getting them ready for school,
10 helping them with their homework and playing with them on the weekends. *Id.*
11 Further, Plaintiff was also able to help care for her boyfriend's three children in
12 addition to her own. *Id.*

13 The ALJ reasonably found that Plaintiff's daily activities contradict her
14 allegations of total disability. There is substantial evidence in the record in
15 supporting the ALJ's determination that Plaintiff's conditions are not as limiting as
16 she alleges.

17 **4. The ALJ properly discredited Plaintiff's subjective complaints due to
18 inconsistencies with the medical record.**

19 The ALJ also noted multiple inconsistencies between Plaintiff's subjective
20 complaints and the objective medical evidence. AR 26-27. An ALJ may discount a
claimant's subjective symptom testimony that is contradicted by medical evidence.

1 *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008).
2 Inconsistency between a claimant's allegations and relevant medical evidence is a
3 legally sufficient reason to reject a claimant's subjective testimony. *Tonapetyan v.*
4 *Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

5 For example, despite allegations of completely disabling mental
6 impairments, while attending mental health appointments Plaintiff often presented
7 as engaged, calm, alert, and cooperative, with good eye contact, and clear and
8 articulate speech. 429, 432-33, 436-37, 447, 448, 450. Dr. Hacker's opinion also
9 contradicted Plaintiff's allegations. AR 26-27, 94. Dr. Hacker opined that Plaintiff
10 had no significant limitations with her ability to perform short, simple, or detailed
11 instructions, sustain an ordinary routine, work in proximity to others, and make
12 simple work-related decisions. *Id.* Thus, the ALJ provided sufficient support for
13 discrediting Plaintiff's subjective complaints.

14 In sum, the Court finds that the ALJ did not err when assessing Plaintiff's
15 subjective symptom testimony due to the numerous legally sufficient reasons
16 stated here that are inconsistent with her claims of total disability. When the ALJ
17 presents a reasonable interpretation that is supported by the evidence, it is not the
18 role of the courts to second-guess it. *Rollins*, 261 F.3d at 857. The Court "must
19 uphold the ALJ's findings if they are supported by inferences reasonably drawn
20 from the record." *Molina*, 674 F.3d 1104, 1111; *see also Thomas*, 278 F.3d 947,

1 954 (if the “evidence is susceptible to more than one rational interpretation, one of
2 which supports the ALJ’s decision, the conclusion must be upheld”).

3 **B. The ALJ Properly Weighed the Medical Opinion Evidence.**

4 The Ninth Circuit has distinguished between three classes of medical
5 providers in defining the weight to be given to their opinions: (1) treating
6 providers, those who actually treat the claimant; (2) examining providers, those
7 who examine but do not treat the claimant; and (3) non-examining providers, those
8 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th
9 Cir. 1996) (as amended).

10 A treating provider’s opinion is given the most weight, followed by an
11 examining provider, and finally a non-examining provider. *Id.* at 830-31. In the
12 absence of a contrary opinion, a treating or examining provider’s opinion may not
13 be rejected unless “clear and convincing” reasons are provided. *Id.* at 830. If a
14 treating or examining provider’s opinion is contradicted, it may only be discounted
15 for “specific and legitimate reasons that are supported by substantial evidence in
16 the record.” *Id.* at 830-31.

17 The ALJ may meet the specific and legitimate standard by “setting out a
18 detailed and thorough summary of the facts and conflicting clinical evidence,
19 stating his interpretation thereof, and making findings.” *Magallanes v. Bowen*, 881
20 F.2d 747, 751 (9th Cir. 1989) (internal citation omitted). When rejecting a treating

1 provider's opinion on a psychological impairment, the ALJ must offer more than
2 his or her own conclusions and explain why he or she, as opposed to the provider,
3 is correct. *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

4 **1. Examining psychologist, Roland Dougherty, Ph.D.**

5 Dr. Dougherty performed a psychological examination on Plaintiff in
6 February of 2015. AR 26, 397-403. Dr. Dougherty opined that Plaintiff would have
7 some difficulty dealing with coworkers, she should be able to accept instructions
8 from supervisors, had the ability to do at least some detailed and complex tasks,
9 was likely to have a good deal of difficulty maintaining regular attendance,
10 completing normal workdays and workweeks without interruption, and dealing
11 with stress in the workplace. AR 403.

12 The ALJ assigned limited weight to Dr. Dougherty's opinion regarding
13 Plaintiff's mental functionality. AR 26. The ALJ properly supported this
14 determination with multiple valid reasons supported by the record. First, the ALJ
15 found that the doctor's opinion was inconsistent with Plaintiff's actual level of
16 activity and reports that she shopped independently, was not socially withdrawn,
17 attended a lot of family functions, took friends to the store, hung out with friends a
18 lot, was raising two children and helping to raise three more, and that she "was
19 going out and doing things." AR 22, 25, 398 401-02, 428. An ALJ may properly
20

1 reject an opinion that provides restrictions that appear inconsistent with the
2 claimant's level of activity. *Rollins*, 261 F.3d at 856.

3 Next, the ALJ gave Dr. Dougherty's opinion limited weight because it relied
4 heavily on Plaintiff's own self-reports of her symptoms. AR 26. An ALJ may
5 discount even a treating provider's opinion if it is based largely on the claimant's
6 self-reports and not on clinical evidence, and the ALJ finds the claimant not
7 credible. *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014). As discussed
8 above, the Court found the ALJ did not err by determining Plaintiff's subjective
9 complaints were not entirely credible. *See supra* at pp. 10-14.

10 The ALJ further rejected Dr. Dougherty's opinion because it was
11 inconsistent with the other evidence in the record. AR 26. An ALJ may reject a
12 doctor's opinion when it is inconsistent with other evidence in the record. *See*
13 *Morgan v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999). For
14 example, minimal findings upon physical examination, AR 350, and the medical
15 sources evaluated by the ALJ found that Plaintiff could still work despite
16 considering her reports of headaches, AR 26, 347, 350, 387.

17 When the ALJ presents a reasonable interpretation that is supported by the
18 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,
19 857. The Court "must uphold the ALJ's findings if they are supported by inferences
20 reasonably drawn from the record." *Molina*, 674 F.3d 1104, 1111; *see also*

1 *Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one
2 rational interpretation, one of which supports the ALJ’s decision, the conclusion
3 must be upheld”). Thus, the Court finds the ALJ did not err in his consideration of
4 Dr. Dougherty’s opinion.

5 **2. Examining physician, William Drenguis, M.D.**

6 Dr. Drenguis performed a consultative physical examination and functional
7 assessment on Plaintiff in October 2014. AR 26, 347-51. In his report, Dr.
8 Drenguis opined that Plaintiff could perform medium level work. AR 26, 350-51.
9 The ALJ gave no weight to Dr. Drenguis’ opinion. AR 26, 347-51.

10 The ALJ rejected Dr. Drenguis’ opinion because it was inconsistent with his
11 own examination findings as well as the over all record. An ALJ may reject a
12 doctor’s opinion when it is inconsistent with other evidence in the record. *See*
13 Morgan, 169 F.3d at 600. During the exam, Dr. Drenguis found Plaintiff’s range of
14 motion, strength, reflexes, straight leg raise test, and senses were all within normal
15 limitations. AR 26, 350. Nor did the doctor make any findings related to Plaintiff’s
16 complaints of neck and back pain. *Id.* Despite these benign finding or absent
17 findings, Dr. Drenguis determined Plaintiff was capable of only a medium level of
18 work.

19 Further, the ALJ also found Dr. Drenguis’ opinion unreliable because it did
20 not establish that Plaintiff’s symptoms were medically determinable, nor did it

1 provide an objective basis or reasonable explanation for determining Plaintiff's
2 limitations. AR 26. Did not make any findings related to Plaintiff's complaints of
3 neck and back pain. AR 26, 350. An ALJ need not accept the opinion of a doctor if
4 that opinion is brief, conclusory, and inadequately supported by clinical findings.

5 *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).

6 When the ALJ presents a reasonable interpretation that is supported by the
7 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,
8 857. The Court "must uphold the ALJ's findings if they are supported by inferences
9 reasonably drawn from the record." *Molina*, 674 F.3d 1104, 1111; *see also*
10 *Thomas*, 278 F.3d 947, 954 (if the "evidence is susceptible to more than one
11 rational interpretation, one of which supports the ALJ's decision, the conclusion
12 must be upheld"). Thus, the Court finds the ALJ did not err in his consideration of
13 Dr. Drenguis' opinion.

14 **3. Nonexamining physician, Howard Platter, M.D.**

15 State agency medical consultant Dr. Platter reviewed the records in evidence
16 as of February 2015. AR 27, 92-93. Dr. Platter opined that Plaintiff was limited to
17 medium level or exertional work. *Id.* The ALJ considered the February 2015
18 opinion of nonexamining physician Dr. Platter without specifically assigning
19 weight it. AR 27, 92-93. However, the ALJ did compare the opinion to the opinion
20

1 of Dr. Dregnus, which he assigned no weight, and made similar findings with
2 regard to the two opinions. AR 26, 27; *See supra* pp. 18 and 19.

3 First, the ALJ noted that Dr. Platter's opinion was inconsistent with the
4 medical record as a whole. AR 27, 92-93, 350, 347, 387. An ALJ may reject a
5 doctor's opinion when it is inconsistent with other evidence in the record. *See*
6 *Morgan*, 169 F.3d at 600. Second, the ALJ noted that Dr. Platter's opinion did not
7 establish that Plaintiff's impairments are medically determinable, nor provide any
8 objective basis or reasonable explanation for finding such physical limitations. AR
9 27, 92-93. An ALJ need not accept the opinion of a doctor if that opinion is brief,
10 conclusory, and inadequately supported by clinical findings. *Bayliss*, 427 F.3d at
11 1216.

12 **4. Nonexamining psychologist, Dan Donahue, Ph.D.**

13 Plaintiff takes issue with the ALJ's lack of discussion regarding the opinion
14 of Dr. Donahue. ECF No. 12 at 9 n.1. However, Dr. Donahue's opinion is also
15 contained in Dr. Hacker's opinion, which the ALJ did discuss and assigned it
16 partial weight. AR 27, 80-81, 87, 92-93. A commissioner need not discuss all
17 evidence presented, rather, he need only explain why significant probative
18 evidence has been rejected. *Vincent ex rel. Vincent v. Heckler*, 739 F.2d 1393,
19 1394-95 (9th Cir. 1984).

1 The Court “must uphold the ALJ’s findings if they are supported by
2 inferences reasonably drawn from the record.” *Molina*, 674 F.3d 1104, 1111; *see*
3 *also Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one
4 rational interpretation, one of which supports the ALJ’s decision, the conclusion
5 must be upheld”). The ALJ reviewed all of the evidence, including Plaintiff’s
6 unreliable testimony, and upon review of the full record, he determined Dr.
7 Hacker’s and Dr. Donahue’s opinions were inconsistent with the reliable portions
8 of the record. Thus, Plaintiff has not demonstrated harmful error.

9 **C. The ALJ Did Not Err at Step Two of the Sequential Evaluation Process.**

10 Plaintiff contends that the ALJ erred by failing to find that Plaintiff’s
11 headaches were a severe impairment. ECF No. 12 at 4.

12 At step two in the five-step sequential evaluation for Social Security cases,
13 the ALJ must determine whether a claimant has a medically severe impairment or
14 combination of impairments. An impairment is found to be not severe “when
15 medical evidence establishes only a slight abnormality or a combination of slight
16 abnormalities which would have no more than a minimal effect on an individual’s
17 ability to work.” *Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988) (quoting
18 SSR 85-28). Step two is generally “a de minimis screening device [used] to
19 dispose of groundless claims.” *Webb v. Barnhart*, 433 F. 683, 687 (9th Cir. 2005)
20 (quoting *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.1996)).

1 Under step two, an impairment is not severe if it does not significantly limit
2 a claimant’s ability to perform basic work activities. *Edlund v. Massanari*, 253
3 F.3d 1152, 1159 (9th Cir. 2001) (citing 20 C.F.R. § 404.1521(a)(b)). A diagnosis
4 from an “acceptable medical source,” such as a licensed physician or certified
5 psychologist, is necessary to establish a medically determinable impairment. 20
6 C.F.R. § 404.1513(d). Importantly however, a diagnosis itself does not equate to a
7 finding of severity. *Edlund*, 253 F.3d at 1159-60 (plaintiff has the burden of
8 proving this impairment or their symptoms affect her ability to perform basic work
9 activities); *see also Mcleod v. Astrue*, 640 F.3d 881, 885 (9th Cir. 2011). An
10 alleged impairment must result from anatomical, physiological, or psychological
11 abnormalities that can be shown by medically acceptable clinical and laboratory
12 diagnostic techniques and must be established by medical evidence not only by a
13 plaintiff’s statements regarding his symptoms. 20 C.F.R. §§ 404.1508, 416.908.

14 Without objective support for her contention, Plaintiff argues the ALJ erred
15 by failing to determine that her headaches were a severe impairment. ECF No. 12
16 at 3-6. However, apart from her own subjective complaints of headaches, there is
17 scant evidence in the record documenting the alleged impairment. Absent proof of
18 limitations affecting Plaintiff’s ability to perform basic work activities an
19 impairment is not considered severe. *See Edlund*, 253 F.3d at 1159-; *see also*
20 *Mcleod v. Astrue*, 640 F.3d 881, 885 (9th Cir. 2011).

1 Furthermore, because Plaintiff was found to have at least one severe
2 impairment, this case was not resolved at step two. Thus, any error in the ALJ's
3 finding at step two is harmless, if all impairments, severe and non-severe, were
4 considered in the determination Plaintiff's residual functional capacity. *See Lewis*
5 *v. Astrue*, 498 F.3d 909, 910 (9th Cir. 2007) (holding that a failure to consider an
6 impairment in step two is harmless error where the ALJ includes the limitations of
7 that impairment in the determination of the residual functional capacity). While
8 Plaintiff argues that the ALJ erred by failing to find her headaches severe at step
9 two, Plaintiff does not describe any additional limitations that were not included by
10 the ALJ in assessing her residual functional capacity. Further, despite the medical
11 sources evaluated by the ALJ finding that Plaintiff could still work, even after
12 considering her reports of headaches, AR 26, 347, 350, 387, and the ALJ's own
13 finding that Plaintiff's headaches were not severe, he nonetheless discussed the
14 impairment throughout his decision. AR 21,24, 25.

15 Additionally, the ALJ specifically noted that he considered all symptoms
16 and opinions in assessing the residual functional capacity. AR 23-24. And the ALJ
17 accounted for Plaintiff's symptoms when determining Plaintiff's limitations. AR
18 23. Accordingly, the Court finds the ALJ did not err in the step two analysis, and if
19 any error did occur it was harmless.

VIII. Conclusion

Having reviewed the record and the ALJ's findings, the Court finds the ALJ's decision is supported by substantial evidence and free from legal error.

Accordingly, IT IS ORDERED:

1. Plaintiff's Motion for Summary Judgment, ECF No. 12, is DENIED.

2. Defendant's Motion for Summary Judgment, **ECF No. 16**, is

GRANTED.

3. The District Court Executive is directed to enter judgment in favor of Defendant and against Plaintiff.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order, forward copies to counsel and **close the file**.

DATED this 1st day of April, 2019.

s/Robert H. Whaley
ROBERT H. WHALEY
Senior United States District Judge